

# Terms & Conditions for the supply of Products and Services

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T&Cs(27)03-24

## 1. Definitions and Interpretation

1.1 In these Conditions, the following definitions apply:

### “Business Day”

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; the person or firm who purchases the Products and/or Services from the Supplier;

### “Business Partner Claw Back”

the obligation of the Business Partner to repay any Commission in accordance with clause 10;

### “Commission”

the Commission payments to be made by the Supplier in accordance with clause 10;

### “Conditions”

these terms and conditions as amended from time to time in accordance with clause 18.7;

### “Confidential Information”

information belonging or relating to either party (the “providing party”), its customers, affairs, or business which is not in the public domain and which is provided to the other party (the “receiving party”) which the receiving party obtains under or as a result of a Contract (including any new document including such information) and which information (i) the providing party has marked as confidential, or (ii) the providing party has advised the receiving party is of a confidential nature or (iii) due to its character or nature, a reasonable person would treat as confidential, including, without limitation, any and all Customer Data and the content of the Contract;

### “Connection”

the commencement of Services to a valid SIM pursuant to an EE contract purchased by the Customer from the Business Partner in relation to Products supplied by the Supplier (and “Connect(s)” or “Connected” shall be construed accordingly);

### “Contract”

the contract or contracts between the Supplier and the Business Partner from time to time for the supply of Products and/or Services in accordance with these Conditions;

### “Customer”

the person or firm who purchases the Products and/or Services from the Business Partner;

### “Customer Data”

Personal Data pertaining to a particular Customer or prospective customer (or any individual associated with such Customer or prospective customer) obtained by, generated by or provided to either party as a result of or in connection with a Contract;

### “Customer Database”

Any database of the Business Partner containing Customer Data or Personal Data;

### “Delivery Location”

has the meaning set out in clause 4.2;

### “EE”

EE Limited (registered in England and Wales with company number 02382161);

### “GC C8”

OFCOM General Condition 8 on sales and marketing of mobile telephony services as

may be amended from time to time together with any current guidance notes issued by OFCOM in respect of General Condition 8;

### “GSM Gateway Apparatus”

a device containing one or more SIMS for one or more mobile networks, which enable calls to mobile networks from fixed networks (whether directly or indirectly) to be routed directly via a GSM link into the relevant mobile network;

### “JEM Portal”

the online portal operated on behalf of the Supplier.

### “Holding Company”

means a holding company as defined in section 1159 of the Companies Act 2006;

### “Loan Phones”

a mobile phone which is provided on a temporary basis by the Business Partner to one of their Customers;

### “OFCOM”

the Office of Communications or such other replacement organisation from time to time;

### “Order”

the Business Partner’s order for the supply of Products and/or Services which if accepted by the Supplier shall be the basis of the Contract as per clause 2;

### “Personal Data”

has the meaning given to that term in the General Data Protection Regulation (EU) 2016/679 as it applies in England and Wales from time to time (including as retained, amended, extended or re-enacted on or after 11pm on 31 January 2020);

### “Price List”

a current price list for Products issued by EE or the Supplier;

### “Products”

the mobile handsets and/or other related products set out in the Order and any other products linked to the mobile handsets including but not limited to insurance and mobile device management;

### “Quarter”

is one of the four three calendar month periods beginning on any 1 January, 1 April, 1 July or 1 October;

### “Restricted Customer”

any firm, company or person who is or has been at any time during the immediately preceding 12 months been a customer or prospective customer of the Business Partner in respect of whom a Connection has been sought or made;

### “Returns Authorisation”

an authorisation from the Supplier to the Business Partner to return a product to receive a refund, replacement, or repair during the product’s warranty period;

### “Services”

the EE network services as may be procured by the Supplier to the Business Partner pursuant to these Conditions for use by Customers and any other services linked to such network services including but not limited to insurance and mobile device management;

### “SIM”

an EE subscriber identification module card

programmable with a unique telephone number or numbers, which enables access to, and the use of, the Services when operated in conjunction with a compatible Product;

### “SOTI License”

A software licence granted by SOTI for mobile device management

### “Supplier”

Midland Communications Distribution Limited registered in England and Wales with company number 3413872 trading as Mdee;

### “System”

has the meaning given to it in clause 11.2.

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Business Partner to purchase Products and/or Services in accordance with these Conditions.
- 2.2 All Orders must be submitted on the JEM Portal.
- 2.3 The Order shall only be deemed to be accepted on the first to occur of:
- a) the Supplier issuing written acceptance of the Order; or
  - b) when the Supplier despatches the Products/commences provision of the Services;
- and on which date the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Business Partner acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract or separately in writing and agreed by a Director.
- 2.5 Under no circumstances shall the Supplier’s acceptance of the Order be construed or implied to create an obligation on the Supplier to subsequently accept any additional or subsequent Order.
- 2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Business Partner seeks to impose or incorporate, or which are or may be implied by trade, custom, practice or course of dealing.
- 2.7 The Supplier does not warrant the availability of Products and the Business Partner accepts that Products listed in Price List may not be available at all times or at all.
- ## 3. Products
- 3.1 The Business Partner shall be responsible for ensuring the Products ordered are of the correct specification for their intended use and location.
- 3.2 The Supplier does not offer Loan Phones as a Product or a service or as part of the Services to the Business Partner or a Customer.
- 3.3 The Business Partner may offer Loan Phones at their own discretion and shall be responsible for all risks and costs associated with such Loan Phones.
- ## 4. Delivery of products
- 4.1 The Supplier shall deliver the Products to the location set out in the Order or such

	other location as the parties may agree in writing ("Delivery Location") within 48 working hours after the Supplier notifies the Business Partner that the Products are ready unless otherwise agreed.		Business Partner's cost, such cost to be reimbursed in the event that the Business Partner's complaint regarding such Products is proved to the Supplier's reasonable satisfaction to be justified.	6.2	Title to the Products shall not pass to the Business Partner until the Supplier has received in cleared funds payment in full in respect of those specific Products and any other Products and Services that the Supplier has supplied to the Business Partner.
4.2	Delivery of the Products shall be completed on arrival at the Delivery Location or when they are collected by the Business Partner's courier from the Delivery Location with prior approval of one of the directors of the Supplier.	4.11	The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Business Partner to cancel any other instalment.	6.3	Until title to the Products has passed to the Business Partner, the Business Partner shall:
4.3	Any dates quoted for delivery of the Products are approximate only and the time of delivery is not of the essence. The Supplier shall have no liability for any losses or other expenses sustained or incurred by the Business Partner as a result of delay. The Business Partner shall not be entitled to refuse acceptance of the Products as a consequence of such delay.	4.12	The Supplier will at its sole discretion either replace or repair free of charge any Products proved to the Supplier's satisfaction to have been damaged prior to delivery and will complete any shortfall in the amount of Products supplied, provided the Business Partner has given written notice to the Supplier as provided above.	a)	store the Products (at no cost to the Supplier) separately from all other Products held by the Business Partner so that they remain readily identifiable as the Supplier's property;
4.4	Failure by the Business Partner to take delivery of the Products or to give adequate delivery instructions will not relieve the Business Partner of its obligation to pay for the Products.	4.13	For Non-Network Handsets:  30 day returns policy for faulty handsets, thereafter manufacturer's warranty applies.	b)	not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
4.5	Where the Business Partner initially fails to take delivery of the Products, unless the goods are rejected due to damage, missing items or incorrect orders, the Supplier shall store the Products until delivery takes place and reserves the right to charge the Business Partner for all related costs and expenses (including insurance).	4.14	For Network Handsets:  14 day returns policy for cancellation/change of mind (distance sales only).  30 day returns policy for faulty handsets and tablets (all sales), thereafter manufacturer's warranty applies; 30 day returns policy for other faulty data devices.	c)	maintain the Products in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery. On request the Business Partner shall produce a policy of insurance to the Supplier;
4.6	The Business Partner must, on request, pay to the Supplier any costs in supplying the Products caused by:		All returns/faulty replacements should be boxed, accompanied with a Return Authorisation number, be completed and returned within 14 days of receiving a Return Authorisation. If the handset or tablet was purchased from a third party please contact them directly to arrange return. If there are any missing or non-genuine items replacing the genuine items in the box returned to the Supplier then the product will be returned to the Business Partner. Return Authorisations should be kept to a maximum of 4% of the total dispatches within each calendar month. Any returns that exceed the 4% cap per month will be charged to the Business Partner, per device at the rates below:	d)	not allow the Products to become the subject of any encumbrance, charge, lien or other interest;
a)	any breach by the Business Partner of its obligations under these Conditions and/or any Contract;		£50 Per non-smartphone	e)	give the Supplier such information relating to the Products as the Supplier may require from time to time.
b)	any factor beyond the Supplier's reasonable control;		£120 Per smartphone	6.4	Subject to clause 6.5, the Business Partner may resell to Customers or use the Products in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Products. However, if the Business Partner resells the Products before that time:
c)	any changes in the dates of delivery of the Products which the Business Partner requires; or			a)	it does so as principal and not as the Supplier's agent; and
d)	any delay caused by the Business Partner's instructions or failure to give adequate information or instructions when the Order has been accepted or at any other time.			b)	title to the Products shall pass from the Supplier to the Business Partner immediately before the time at which resale by the Business Partner occurs.
4.7	All Products shall be checked by the Business Partner on delivery and any shortages, or damaged Products or non-delivery must be notified within 48 hours of receipt (or non-receipt as the case may be).	<b>5</b>	<b>Quality of products</b>	6.5	If before title to the Products passes to the Business Partner the Business Partner becomes subject to any of the events listed in clause 14.1 then, without limiting any other right or remedy the Supplier may have:
4.8	The Business Partner shall give notice in writing to the Supplier within 2 Business Days if it is alleged that:	5.1	The Supplier purchases Products with the benefit of industry standard warranties from the manufacturers. Such warranties shall be assigned to the Business Partner to the fullest extent possible and the liability of the Supplier in respect of the Products is limited in accordance with clause 13.3.	a)	the Business Partner's right to resell Products or use them in the ordinary course of its business ceases immediately; and
a)	there is a surplus or shortfall of the amount of Products delivered; or	5.2	Save as provided in clause 5.1, and to the fullest extent permitted by law, the Supplier gives no warranty, representation, undertaking or guarantee in relation to the Products and all terms, conditions and warranties that would, but for this clause, be implied into these Conditions are expressly excluded to the fullest extent permitted by law.	b)	the Supplier may at any time:
b)	there is any visible damage to the Products, or any indication that the Products have been otherwise tampered with.	5.3	Except as provided in this clause 5, the Supplier shall have no liability to the Business Partner in respect of the Products' failure to comply with the warranty set out in clause 5.1.	(i)	require the Business Partner to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
4.9	If the Business Partner does not give notice in accordance with clause 4.9 within 2 Business Days from the date of delivery, Products delivered shall be deemed in all respects to be in accordance with the Order and the Business Partner shall be deemed to have irrevocably and unconditionally accepted the Products on delivery and, save in respect of faulty Products where the fault was not visible on delivery of the Products, shall not be entitled to raise any subsequent claim in relation thereto.	5.4	The terms of this clause 5 shall apply to any repaired or replacement Products supplied by the Supplier under clause 4.12.	(ii)	if the Business Partner fails to do so promptly, enter any premises of the Business Partner or of any third party where the Products are stored in order to recover them.
4.10	The Business Partner shall keep any Products it has reported to the Supplier under clause 4.8 and/or clause 4.9 in the state in which such Products were delivered and at the Business Partner's risk for a period of thirty (30) days from the date of delivery and shall allow the Supplier or its authorised representative to inspect and recover the same together with all original packaging materials or, if requested by the Supplier, shall return the same to the Supplier at the	5.5	If a valid warranty claim is made within the warranty period (if applicable), the Supplier will replace or repair (at its discretion) the Products free of charge.	6.6	The Supplier shall be entitled to recover payment for the Products notwithstanding that the ownership of any other Products has not passed to the Business Partner.
		<b>6</b>	<b>Title and risk</b>	<b>7</b>	<b>Business partner's obligations</b>
		6.1	The risk in the Products shall pass to the Business Partner on completion of delivery.	7.1	The Business Partner shall at all times:

d)	comply with all legislation and regulations, guidelines or industry codes of practice as may be applicable, including, without limitation, the Distance Selling Regulations, the Privacy and the Electronic Communications (EC Directive) Regulations 2003, the Privacy and the Electronic Communications (EC Directive) (Amendment) Regulations 2011 and the Bribery Act 2010 where applicable), the Payment Card Industry Data Security Standard, General Data Protection Regulation (EU) 2016/679 and be responsible for obtaining all licences, permits and approvals that are necessary or advisable for the sale of any Products and for the performance of its obligations hereunder;	(or reasonably believed to be being used) with such GSM Gateway Apparatus or other device. In addition to the suspension right set out above, or any other right the Supplier may have under these Conditions, the Supplier shall be entitled to Claw Back from the Business Partner any Commission paid to the Business Partner related to use of a SIM in breach of this clause and shall be entitled to recover any losses suffered by the Supplier as a consequence of such breach;	8.2	In connection with the account application the Supplier will carry out credit fraud prevention checks with a licensed credit reference and fraud prevention agency and this agency will retain a copy of the search. Information from the application and payment details of the account will be recorded and may be shared with other organisations to help make credit or insurance decisions about the Business Partner and members of the Business Partner's group and for debt collection and fraud prevention purposes.
e)	comply with GC C8 and the Business Partner shall indemnify the Supplier in respect of any liability, loss, damage or expenses incurred or suffered by the Supplier as a result of any breach by the Business Partner of, or any non-conformance by the Business Partner with the obligations under GC C8. The Business Partner shall comply with the provisions of Appendix B to these Conditions;	n)	8.3	The Supplier will only accept the application when the Business Partner passes a credit check to the Supplier's satisfaction.
f)	in respect of its promotion of the Services, clearly indicate that it is acting as a selling representative only and not as part of EE or the Supplier and not cause the public in any way to confuse it with EE or the Supplier;	o)	8.4	If approved an account will be opened and the Supplier may provide the Business Partner with a credit limit inclusive of VAT. Any increase in the credit limit must be requested in writing and will be subject to approval by the Supplier, which may entail further credit checks.
g)	notify the Supplier in writing if any Product which has been provided to the Business Partner but not on-sold is stolen, lost, damaged or tampered with;	p)	8.5	The Supplier reserves the right to close the Business Partner's account, and withhold any future payments if:
h)	immediately notify the Supplier in writing of all complaints it receives with regard to the Services and/or Products;	q)	a)	there is no trading with the Business Partner for a consecutive period of three (3) months; trading defined as New & Upgrade connections
i)	not act in any way which brings the Supplier, EE or its Products, Services or trademarks (including without limitation the name EE) into disrepute or which in any way damages the reputation of EE, its Products, Services or trademarks (including without limitation the name EE);	r)	b)	EE issues a "do not deal" notice in respect of the Business Partner;
j)	not cause any adverse publicity, public criticism or damage to the reputation of EE or the Supplier, any EE group company and/or its customers and also not cause any material disruption of the business of EE or any EE group company or the Supplier or any of their customers;	s)	c)	the Business Partner is found to have acted fraudulently (as determined by EE or the Supplier);
k)	not directly or indirectly assist or enable a Customer to cancel a contract or otherwise deactivate the Services where the Business Partner knows or ought reasonably to know that the Customer is within the minimum term of his or her contract;	t)	d)	there are persistent Customer complaints about the Business Partner;
l)	not (without the prior written consent of the Supplier) facilitate, promote, sell or otherwise use GSM Gateway Apparatus or any other device which is used to route non-mobile or third party traffic through the EE network;	u)	e)	the Business Partner fails to comply with the EE's compliance guidelines;
m)	Without obtaining prior written consent from EE, the Business Partner must not operate, whether directly or through a third party;	(i)	f)	the Supplier reasonably believes that the Business Partner's Connections have materially reduced; and
i)	a GSM Gateway, commonly known as a 'SIM box';	(ii)	g)	any of the grounds for termination in clause 14.1 occur.
ii)	any device to route or re-route voice, data or other Services on, from or to the Network including but not limited to:	(iii)	8.6	In the event that the Supplier exercises its right to close the Business Partner's account in accordance with clause 8.5, the Supplier shall be entitled to manage the Business Partner's Customers and Customer Data base as a way of mitigating its losses due to the Business Partner's actions, including but not limited to those losses due to breach of clause 17.
(i)	a device used to forward or divert Services with the intention of reducing charges for that call; or	(iv)	9	<b>Charges and payment</b>
(ii)	illegal repeaters (a device to boost coverage which is unlicensed and used without EE's express prior written consent)	(v)	9.1	The price for the Products shall be the price set out in the Order or, if no price is quoted, the price set out in the Price List as at the date of delivery. The price of the Products is exclusive of all costs and charges of packaging, insurance, transport of the Products which shall be payable in addition where relevant. Additional charges must be detailed on the order.
If the Business Partner is in breach of this clause 7.1 m) or the Supplier reasonably believes that the Business Partner is in breach of this clause, the Supplier shall have the right to immediately suspend from the EE network, without liability or notice to the Business Partner, any SIM card being used	(vi)	(vi)	9.2	For the sale of Apple products only, the Business Partner shall adhere to the maximum sale prices listed in the Price List as set out from time to time.
	(vii)	(vii)	9.3	The Business Partner acknowledges that EE and the Supplier reserves the right to amend the Price List from time to time and the Supplier shall give the Business Partner such notice as is reasonably practicable of such changes.
	(viii)	(viii)	9.4	The Supplier shall invoice the Business Partner on or at any time after completion of delivery.
	v)	v)	9.5	The Business Partner shall pay each invoice submitted by the Supplier.
	w)	w)	8	<b>Account</b>
	8	8	8.1	Upon receipt of the application form duly completed by the Business Partner, the Supplier may provide an account for the use

a)	within 14 days of the date of the invoice; and		in the reasonable opinion of the Supplier appropriate as security against the Business Partner's non-compliance with the payment provisions of this clause.		or, failing agreement, on the application of either party made to the president for the time being of the Institute of Chartered Accountants in England and Wales. Save in the event of manifest error or fraud, the Accountant's determination of any matters referred to him under this clause shall be final and binding on the parties. Each party shall bear its own costs incurred in connection with the Accountant's determination pursuant to this clause.
b)	in full and in cleared funds to a bank account nominated in writing by the Supplier,				
	and time for payment shall be of the essence of the Contract.	9.13	The Business Partner shall pay all undisputed amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.		
9.6	If the Supplier agrees that payment may be paid by cheque the Business Partner acknowledges and agrees that it will be liable to pay £10 (ten pounds) to the Supplier for any cheques which fail to clear in addition to the amount of the payment due.	9.14	The Supplier may agree with the Business Partner a payment plan for repayment of any or all sums owing to the Supplier whether under the Contract or otherwise with set repayment amount(s) and specific payment date(s) ("Payment Plan"). The Supplier shall be entitled to demand immediate repayment of all sums owing to it by the Business Partner if any repayment amount under the Payment Plan is outstanding in excess of 5 Business Days.	10.4	Commission shall not be payable for any of the following categories of Connections:
9.7	All amounts payable by the Business Partner under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Business Partner, the Business Partner shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.	9.15	The Business Partner shall continue to pay the Supplier for Services (including SOTI Licences) ordered by the Business Partner where the Supplier has agreed to allow the Business Partner to pay by instalments.	a)	Connections completed without adherence to the proper process or other conduct on the part of the Business Partner violates these Conditions; unless agreed in writing with the supplier;
9.8	Notwithstanding clause 9.4 above, the parties agree that the Supplier shall be entitled to set off against undisputed sums due to the Business Partner (including Commission) any sums which are or become payable by the Business Partner to the Supplier whether or not such liability arises under the Contract or otherwise. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights available to it under these Conditions.	9.16	The obligation in clause 9.15 does not cease if a Customer cancels their contract or otherwise, including for the avoidance of doubt in respect of SOTI Licences.	b)	connections not processed correctly on the JEM portal;
				c)	Connections using a SEC (unique sales entity code) not assigned by EE to the Supplier or the Business Partner as the case may be; and
				d)	any commission paid to the Business Partner that the Business Partner is not entitled to pursuant to this clause shall be subject to Claw Back.
				10.5	The Supplier reserves the right to withhold Commission for a period of up to 120 days for any Connection that the Business Partner does not provide satisfactory proofs for or where the Supplier determines the Connection may be subject to Claw Back.
9.9	The Business Partner will properly advise the Supplier in writing of any of the following:			10.6	In the event that a Customer does not reach the end of the term of their contract with EE and/or leaves EE early, then the Supplier shall be entitled to recover any relevant part of any Commission advanced to the Business Partner, including where any such Commission was advanced to allow the Business Partner to purchase handsets.
a)	change of address;				The Supplier will be entitled to recover any relevant part of any Commission which will not be paid but which has been forfeited due to the Customer not reaching the end of the term of their contract with EE and/or leaves EE early.
b)	change of bank details;	10.2	The Supplier shall provide statements of Commission to the Business Partner either on the JEM Portal and such statements will be provided on a weekly or such other basis as may be specified by the Supplier (the "Commission Statement"). Each statement will contain a summary of the previous period's Connections with full details listed by IMEI, and calculated Commission due on a self-billing invoice. The Supplier will use all reasonable endeavours to issue this on the 1st & 16th of each month.	10.7	All new Business Partners will be required to provide Customer information forms and proofs in a form reasonably acceptable to the Supplier for all Connections secured.
c)	change in VAT status and confirmation on an annual basis (where applicable) of existing VAT status.				Copies of this documentation should be attached to the relevant claim for
d)	change of Directors (addition and removal/resignation); or				Commission and returned to the Supplier in order to generate a Commission payment. The Supplier reserves the right to review any proof supplied and to require further information in connection therewith. Failure to supply the relevant documentation will delay the payment of Commission as no payments will be made without it. If the Supplier is satisfied with the provision of supporting documentation by the Business Partner it may waive the requirement for Customer information forms and proofs provided that the Supplier reserves the right to reintroduce the requirement at any time by giving written notice to the Business Partner. The Supplier may also on a monthly or such other basis as it sees fit issue a proof audit requesting a random selection of copies of proofs taken at the point of registration of the Customer, and any such request must be returned to the Supplier within thirty (30) days of receipt by the Business Partner. Failure to supply the relevant documentation will delay the payment of Commission and may lead to a suspension or closure of the Business Partner's account.
e)	a change of control (being a change in shareholder(s) of the Business Partner or any holding company)				
9.10	If the Business Partner fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Business Partner shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment. The Business Partner shall pay the interest together with the overdue amount. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights available to it under these Conditions.	10.3	In the event that the Business Partner wishes to query the amount of the Commission contained in the Commission Statement (as provided by the Supplier in accordance with clause 10.2 above), the Business Partner agrees and confirms that it shall notify the Supplier in writing as soon as reasonably practicable following receipt of the relevant Commission Statement and in any event within 12 months of the date of the Connection and will include all relevant details and supplementary evidence (the "Commission Notice"). The Supplier will consider the Commission Notice as soon as reasonably possible, and in any event within 20 business days of receipt of the Commission Notice. The Supplier will be under no obligation to consider or adjust any Commission where the Commission Notice is received after 12 months from the date of the Connection and the parties agree to attempt in good faith to resolve any dispute. In the event that the parties are unable to resolve any dispute within 40 business days of the date of the Commission Notice, either of the parties may notify the other that it wishes to refer the matters in dispute to a member of a reputable independent firm of chartered accountants (the "Accountant") who shall act as an expert and not as an arbitrator. The Accountant must afford each of the parties the opportunity to make representations in writing to him, and may, at his absolute discretion, afford them the opportunity to make oral representations to him, but otherwise shall determine his own rules of procedure. The Accountant shall be appointed by agreement between the parties	10.8	The Supplier may attend any visit (including follow up visits that may occur) that EE makes to the Business Partner for the purpose of reviewing the matter referred to in clause 10.5 and general compliance with EE's rules and guidelines.
9.11	If the Business Partner fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier may engage a debt recovery specialist to recover any sums due from the Business Partner. The Business Partner shall indemnify the Supplier against its costs incurred in recovering any amounts due under the Contract including its fees payable to the debt recovery specialist.				
9.12	In addition to the rights prescribed by clauses 9.4 and 9.7 above, if the Business Partner has not paid any undisputed sum(s) which are due to the Supplier, the Supplier shall have the right to, without prior notice:				
a)	suspend delivery of any Products not then delivered at that time; and/or				
b)	require the Business Partner as a condition of further supply and delivery of Products to provide such financial security which is				



10.9	Claw Back will be applied to any Commission paid to the Business Partner where:		deemed to be the Confidential Information of EE or the Supplier. In particular, but without limiting the generality of the foregoing, the Business Partner shall ensure that:	which the partner may collect or have been collected (including indirectly via a third party) for its own purposes and be Processing at the time of, or at a separate time to, the sale or promotion of Products and Services and excluding any EE Customer Data.
a)	a Connection has been identified as fraudulent (as determined by EE);			
b)	no payment due on the Business Partner's account has been received in cleared funds or where there are any outstanding payments due;	a)	such usernames and passwords are not disclosed to any person, or for any purpose, other than to its own employees or agents for the purpose of accessing and using the System; and	<b>"EE Customer Data"</b> means any Personal Data pertaining to a particular Customer or prospective customer (or any individual associated with such Customer or prospective customer) provided by EE to the Business Partner and Processed by the Business Partner on behalf of EE as part of the sale or promotion of the Products and Services pursuant to these Conditions;
c)	any value added services are sold and subsequently disconnected within 120 days;	b)	best practice security and technical measures are put into place and maintained by the Business Partner to ensure that the Business Partner's employees or agents cannot:	<b>"GDPR"</b> means General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, and any amendment or replacement to it;
d)	loyalty promotions are sold and subsequently disconnected within 120 days;			
e)	a Customer is disconnected within 120 days check of the Connection, having paid their first bill;	i.	have access to, or use, the System; or	
f)	the Customer breaches its contract with EE and EE suspends or terminates the Services for that Customer;	ii.	inform a third party how to access or use the System, once such employee or agent ceases to be employed or engaged by the Business Partner.	<b>"Processing Appendix"</b> means each appendix containing the details of the Processing of EE Customer Data under these Conditions as agreed by the Parties and incorporated into Appendix A, and subject to the terms of these Conditions as of the effective date specified in each Processing Appendix;
g)	the number of Connections in any month that becomes inactive is above 10%. A Connection shall be considered inactive if the Customer does not make an average of at least 10 minutes per month of outbound calls (or equivalent value data usage) over a rolling three month period, and the inactivity percentage is calculated by dividing the number of Connections which are inactive per month with the number of Connections made by the Business Partner in that same month.	11.5	The obligations of confidentiality in this clause 11 shall survive termination of the trading relationship between the Supplier and the Business Partner.	<b>"Sub-Processor"</b> means any third party engaged to Process EE Customer Data for the purposes of this Agreement, including Business Partner appointed in accordance with these Conditions;
		<b>12</b>	<b>Customer data</b>	<b>"Supplier Customer Data"</b> means any Personal Data pertaining to a particular Customer or prospective customer (or any individual associated with such Customer or prospective customer) provided by the Supplier to the Business Partner and Processed by the Business Partner on behalf of the Supplier as part of the sale or promotion of the Products and Services pursuant to these Conditions; and
		12.1	In clauses 12 and 12A the following terms will have the following meanings:	<b>"Transfer"</b> or <b>"Transferred"</b> means the provision of access to and/or the transfer of Personal Data by or to a Recipient.
10.10	Subject to clause 10.5 and any right of set off exercised under clause 18.3 any Commission due will be paid twice monthly in arrears by BACS.		<b>"Adequate Country or Sector"</b> means (i) a country within the EEA, or (ii) a country, territory or sector (the latter, from the date the GDPR takes effect) within a country which has been subject to a finding, and continues to be subject to a finding for the duration of these Conditions (including any further period during which payments are due to the Supplier under these Conditions), of an adequate level of protection by the European Commission, excluding the United States of America;	
<b>11</b>	<b>Confidentiality</b>			
11.1	The Business Partner undertakes and agrees that it shall not, either during the continuance of their trading relationship with the Supplier or at any time thereafter, (and shall procure that their employees, servants, or agents do not) disclose to any third party any Confidential Information without the prior written consent of the other party.		<b>"Business Partner Customer Data"</b> means any Personal Data which a Business Partner may collect or have collected (including indirectly via a third party) for its own purposes and be processing at the time of, or at a separate time to, the sale or promotion of Products and Services and excluding any EE Customer Data and any Supplier Customer Data.	
11.2	The Business Partner shall procure that all Personal Data disclosed to it by the Supplier or EE which may at any time come into the Business Partner's knowledge, possession or control, shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by these Conditions and shall not be disclosed to any third party.		<b>"Contract Personnel"</b> means all employees, agents and other third parties who may process EE Customer Data from time to time;	12.2 EE, the Supplier and the Business Partner acknowledge and agree, for the purposes of this Agreement, that:
11.3	The provisions of clause 11.1 above shall not apply in respect of Confidential Information if:			12.2.1 EE is the Controller of the EE Customer Data and the Supplier is the Processor of the EE Customer Data;
a)	the receiving party is required to disclose such information by law or a Court, by a taxation authority or other authority of competent jurisdiction;		<b>"Controller", "Data Subject", "Personal Data", "Process/Processing/Processed", "Processor", "Recipient" and "Supervisory Authority"</b> will have the meanings ascribed to them in the Directive, and when applicable in the GDPR, and "Binding Corporate Rules" and "Personal Data Breach" will have the meanings ascribed to them in the GDPR (from the date the GDPR takes effect);	12.2.2 the Supplier is the Controller of the Supplier Customer Data; and
b)	the receiving party needs to disclose such information to its employees or professional advisers or subsidiary or parent companies in connection with the Contract, provided that the receiving party shall procure that such employees or professional advisers or subsidiary or parent companies are made aware of the confidential nature of such information and are bound by obligations of confidence no less strict than those set out in this clause 11 in respect of the same;		<b>"Controller to Processor Model Clauses"</b> (Model Clauses) means the standard contractual clauses for the transfer of personal data to processors established in third countries, as adopted by the European Commission by its Decision C(2010) 593 of 5 February 2010 (as amended or replaced from time to time) and as set out in the European Commission's relevant website (as amended or replaced from time to time): <a href="http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm">http://ec.europa.eu/justice/data-protection/international-transfers/transfer/index_en.htm</a> ;	12.2.3 the Business Partner is the Controller of the Business Partner Customer Data.
c)	the receiving party develops such information independently;			12.3 The Business Partner acknowledges, warrants and undertakes that it is permitted to use EE Customer Data solely for the purposes, and duration, and in accordance with the terms, of this Agreement and solely as Processor for EE.
d)	the providing party has provided the receiving party with written authorisation for the disclosure of such information; or			12.4 The Business Partner, warrants and undertakes that it will (and will procure that its Contract Personnel and any Sub-Processors will):
e)	such information is or becomes publicly known through no fault of the receiving party.			12.4.1 process EE Customer Data as a Processor for the purposes described in this Agreement and in the Processing Appendix and in accordance with EE's documented instructions (the "Permitted Purposes"), unless the Business Partner is required by laws of the EU or a member state of the EU (from time to time) to Process EE Customer Data otherwise, in which case the Business Partner will inform the Supplier of that legal requirement before the Processing of the EE Customer Data, unless applicable law prohibits the Business Partner from doing so on important grounds of public interest;
11.4	The Business Partner is responsible for the security of any usernames or passwords it uses to access and use any system maintained or used by EE and the Supplier in relation to the Contract (the "System") and such usernames and passwords shall be		<b>"Data Protection Legislation"</b> means collectively (i) any applicable legislation of the European Union (including, but not limited to, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011), (ii) applicable local legislation relating to the Processing of Personal Data including, but not limited to, the Data Protection Act 2018, and (iv) where applicable, the GDPR, and any successor legislation or regulation;	12.4.2 not disclose the EE Customer Data in any circumstances except as permitted by these Conditions, including Clause 11.1 (Confidentiality), or required by applicable law

	or with EE's prior written consent or at the specific written request of EE;		becomes aware of:		Sector:
12.4.3	not use the EE Customer Data for any purposes which may be inconsistent with those notified to Data Subjects in the EE Privacy Policy, available at <a href="http://ee.co.uk/privacy-policy">http://ee.co.uk/privacy-policy</a> (as amended from time to time);	12.5.7.1	any request from a Data Subject to exercise any of its rights under Data Protection Legislation (including providing the Supplier with a copy of the Personal Data in the format and media specified by EE); and	12.7.1	The Business Partner will not Transfer EE Customer Data from the UK or a country within the EEA to a non-Adequate Country or Sector.
12.4.4	implement appropriate technical and organisational measures (including the minimum security requirements set out in the Procedures Manual) to protect the EE Customer Data against any unauthorised and unlawful Processing, including, but not limited to, against a Personal Data Breach. The Business Partner will keep such measures under review and update them where necessary so that they remain appropriate and, at EE's request, the Business Partner will provide the Supplier with a written description of them. Such measures will include:	12.5.7.2	any other correspondence, enquiry, claim or complaint received from a Data Subject (or other person acting on their behalf) or Supervisory Authority in connection with the Processing of the Personal Data or either party's compliance with the Data Protection Legislation under this Agreement, and will assist the Supplier, including by appropriate technical and organisational measures, and provide the Supplier with details of any such request, correspondence, enquiry, claim or complaint in writing to enable the Supplier to respond to the same within the timescales set out in any such request or notice, or as otherwise reasonably required by the Supplier and the Business Partner will not respond to the same directly without the Supplier's written approval;	12.7.2	In the event that the Business Partner proposes to Transfer EE Customer Data to a non-Adequate Country or Sector, the Business Partner undertakes to do so only with the Supplier's prior express written consent and acknowledges and agrees that such consent shall only be granted subject to
12.4.4.1	encryption and pseudonymisation of EE Customer Data, as appropriate, or as may be required by EE's minimum security requirements set out in the Procedures Manual from time to time,	12.5.8	immediately notify the Supplier in writing if it is of the opinion that compliance with an instruction of EE would infringe Data Protection Legislation;	(i)	the Business Partner entering into the Controller to Processor Model Clauses on behalf of the Supplier or EE, or (ii) in the case of Transfers to the USA only, by reliance on the EU-US Privacy Shield program (adopted by the EC's Decision (EU) 2016/1250 of 12 July 2016), provided that the Business Partner warrants that the Recipient has self-certified its compliance with the US Department of Commerce and that the Business Partner will notify the Supplier if such compliance is not maintained for any reason. If the Model Clauses or Privacy Shield are replaced, amended or no longer recognised as legally valid under Data Protection Legislation, the Business Partner will promptly take such steps as may be mandated by the Supplier and EE to ensure that the Business Partner's Processing complies with Data Protection Legislation.
12.4.4.2	the ability to ensure the ongoing confidentiality, integrity, availability and resilience of relevant systems and Services that Process EE Customer Data,	12.5.9	keep complete and accurate written records of all Processing of EE Customer Data by it under these Conditions, including (without limitation) as a minimum a record of all EE Customer Data held by the Business Partner and any information to enable EE to verify and/or procure that the Business Partner is in full compliance with its data processing obligations under this Agreement;	12.8	Within the timeframe reasonably required by the Supplier and EE, the Business Partner will make available to the Supplier all information necessary to demonstrate its compliance with this clause 12 and/or the Data Protection Legislation and/or Schedule 8 and, upon the Supplier giving reasonable notice, allow the Supplier and EE (including third parties appointed by EE) and regulatory authorities (including a Supervisory Authority), (each an "Auditing Party" and together the "Auditing Parties") to conduct an audit (including inspections) to enable the Auditing Parties to verify such compliance, and the Business Partner shall provide all necessary co-operation in relation to any such audit. The reasonable cost and expense of any audit under this clause will be borne by EE, unless the audit identifies that the Business Partner is not complying with its obligations under this clause 12 in which case the Business Partner will be responsible for the full cost and expense of the audit (including professional fees and any Auditing Party's fees or expenses).
12.4.4.3	the ability to restore the availability and access to EE Customer Data in a timely manner in the event of a physical or technical incident, including, but not limited to, a Personal Data Breach, and	12.5.10	taking into account the nature of the Processing and the information available to the Business Partner and within the timeframe reasonably required by the Supplier, assist Supplier to enable it to comply with its obligations under Data Protection Legislation;		
12.4.4.4	a process for regularly testing, assessing and evaluating the effectiveness of the Business Partner's technical and organisational measures for ensuring the security of the Processing of EE Customer Data under this Agreement;	12.5.11	upon expiry or termination of these Conditions, at the Supplier's option, securely delete or return to the Supplier all copies of the EE Customer Data in its possession or control, and promptly certify in writing to the Supplier that it has done so. Where the Business Partner is required by EU law or EU member state law and/or other applicable local legislation to retain a copy of the EE Customer Data, the Business Partner will (i) promptly give written notice to the Supplier of that requirement and (ii) store that Personal Data in accordance with Data Protection Legislation;	12.9	Any breach of this clause 12 and/or Schedule 8 by the Business Partner will be deemed to be a material breach of these Conditions. The Business Partner will indemnify the Supplier and EE and each member of the EE Group from and against any costs, losses, damages, proceedings, claims, expenses, demands, penalties or fines incurred or suffered by the Supplier and EE which arise as a result of (a) any breach of this clause 12 by the Business Partner and/or (b) any breach of Schedule 8 and/or (c) Personal Data Breach that affected any Personal Data in the possession or under the supervision of the Business Partner, its Contract Personnel, its agents or its Sub-Processors.
12.4.5	ensure that all Contract Personnel that Processes EE Customer Data are bound by duties of confidentiality. The Business Partner will also ensure that all such Contract Personnel will Process the EE Customer Data only as necessary for the Permitted Purposes and have undertaken training appropriate to their roles;	12.5.12	comply with Data Protection Legislation at all times, and have due regard to any relevant guidance and codes of practice on the Processing of Personal Data, and not perform its obligations under these Conditions in such a way as to cause the Supplier or EE to breach any of its obligations under Data Protection Legislation.		
12.4.6	notify the Supplier without undue delay, and in any event, no later than 12 hours from the time the Business Partner became aware that any Personal Data has been the subject of a Personal Data Breach and without prejudice to EE's right to seek any other legal remedy under these Conditions, promptly and in any event within the timeframe reasonably required by EE:	12.6	Sub-Processors:	12.10	Unless required to do so by the Supervisory Authority (or any other competent authority) or by applicable law, the Business Partner will not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of EE Customer Data, without the Supplier's and EE's prior written approval.
12.4.6.1	investigate the Personal Data Breach and provide the Supplier with a detailed description of it and any other information that may reasonably be requested relating to it, including, but not limited to, any information required by the Supplier and EE to fulfil its data breach reporting obligations under the Data Protection Legislation;	12.6.1	Subject to clauses 12.6.3 and 12.6.4 below, by entering into these Conditions, EE gives its specific written authorisation to the Supplier to use persons listed in Appendix A as Sub-Processors (Processing Appendix), if any.		
12.4.6.2	take appropriate actions to identify and mitigate the effects of any such Personal Data Breach and to prevent the recurrence of it, and notify the Supplier of those actions;	12.6.2	The Supplier will seek EE's prior written authorisation at least 30 days before the Supplier intends to engage any other Sub-Processor, remove an existing Sub-Processor or change the details of the Processing a Sub-Processor performs or will perform.		
12.4.6.3	provide the Supplier with co-operation and assistance in relation to the Personal Data Breach and carry out any recovery or other action that may be reasonably requested to remedy the Personal Data Breach; and the Business Partner may not engage or communicate with any third party (including a Supervisory Authority) in relation to any Personal Data Breach without the Supplier's prior written approval provided that nothing in this sub-clause 12.5.6 shall prevent the Business Partner from communicating with a Supervisory Authority to the extent necessary to comply with the Data Protection Legislation;		If EE (acting reasonably) does not give its authorisation to the Supplier to use any such Sub-Processor, the Supplier will not use that Sub-Processor and will seek EE's prior written authorisation to engage a replacement Sub-Processor within a reasonable time period.	12.11	In the event of any change in the Data Protection Legislation subsequent to the date of signature of the Amendment Agreement, EE, the Supplier and Business Partner will work together to agree on such amendments to these Conditions as may be reasonably requested to ensure that the Processing of Customer Data under these Conditions
12.5.7	promptly notify and assist the Supplier if it	12.7	No transfer to a non-Adequate Country or		

	continues to comply with the Data Protection Legislation.		Business Partner's business or assets; or if any analogous event occurs in any jurisdiction;	15.2	The Supplier shall not be liable to the Business Partner as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
12.12	This clause 12 will survive termination of these Conditions.	d)	if there is a change of control (being a change in shareholder(s) of the Business Partner or any holding company of the Business Partner) which the Supplier has not previously approved in writing;		
<b>12A</b>	<b>Intellectual property in the business partner customer data and EE customer data</b>			<b>16</b>	<b>Audit</b>
12A.1	EE shall own all Intellectual Property rights, title and interest in the EE Customer Data and all databases in relation thereto.	e)	the Business Partner suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;	16.1	The Business Partner hereby grants the Supplier and/or its authorised agents the right of access on reasonable notice at all reasonable times during the Business Partner's normal business hours to the premises of the Business Partner, its business records and its computer and support systems for the purposes of the Supplier monitoring and/or carrying out an audit of the Business Partner's compliance with the Contract; and
12A.2	The Supplier shall own all Intellectual Property rights, title and interest in the Supplier Customer Data and all databases in relation thereto (other than the EE Customer Data).	f)	the Business Partner's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;		
<b>13</b>	<b>Liability</b>			16.2	The Business Partner shall endeavour to remedy any breaches highlighted by such audit promptly and at its sole expense.
13.1	Subject to clause 13.4, the Supplier shall not be liable in any circumstances whether under the law of contract, tort (including without limitation negligence), breach of statutory duty or otherwise for any indirect or consequential loss howsoever caused arising under or in connection with the Contract or arising out of the purchase, possession, sale, rental, advertising or use by the Business Partner of any Product or Service.	g)	the Business Partner acts in such a manner that in the Supplier's reasonable opinion that the Business Partner's conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.		
13.2	Subject to clause 13.4, the Supplier shall not be liable in any circumstances for any:	14.2	Without limiting its other rights or remedies, the Supplier may suspend deliveries of Products under the Contract or any other contract between the Supplier and the Business Partner:	17	<b>Protection of goodwill</b>
a)	loss of profits, revenue, business, contracts, anticipated savings, or any other financial loss; or	a)	if the Business Partner fails to pay any undisputed amount due under the Contract on the due date for payment; or	17.1	In order to protect the legitimate business interests of the Supplier, the Business Partner covenants with the Supplier that it shall not solicit or entice away (or attempt to solicit or entice away) from EE or any group company of EE the business or custom of any Restricted Customer.
b)	loss of profits; or	b)	the Business Partner becomes subject to any of the events listed in clause 14.1 c), or the Supplier reasonably believes that the Business Partner is about to become subject to any one of them.	17.2	In order to further protect the legitimate business interests of the Supplier, and in consideration for the Supplier entering into the Contract, the Business Partner covenants with the Supplier not to assign, sell, transfer or in any way dispose of a Customer Database or enter into any transaction which would have the effect of transferring the a Customer Database without the prior written consent of the Supplier and then only to a firm, company or person who is a business partner of the Supplier.
c)	loss of goodwill, however arising and whether such loss is direct or indirect.	14.3	Without affecting any other right or remedy available to it, the Supplier may terminate the Contract by giving the Business Partner 30 days' written notice.		
13.3	In the event that any Product is in breach of the warranty set out in clause 5.1, the sole and exclusive remedy of the Business Partner shall be such credit as the Supplier is entitled to receive from the manufacturer (less any depreciation and/or price protection that the Business Partner has benefitted from, and provided the Product in question has been returned to the Supplier in accordance with its instructions).	14.4	On termination of a Contract for any reason:	17.3	The Business Partner shall be bound by the covenants set out in Clause 17.1 and Clause 17.2 during the term of the Contract, and for a period of 12 months after termination of this agreement however so arising.
13.4	Nothing in these Conditions limits or excludes the Supplier's liability for death or personal injury caused by its negligence and/or the Supplier's liability for fraudulent misrepresentation.	a)	the Business Partner shall immediately pay to the Supplier all of the Supplier's undisputed outstanding unpaid invoices and interest and, in respect of the Products and/or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Business Partner immediately on receipt;	17.4	The parties hereby acknowledge that covenants in Clauses 17.1 and 17.2 reflect the legitimate business interest of the Supplier, and in particular that Connections made under this agreement may become loss-making for the Supplier in the event that the Business Partner breaches such covenants.
13.5	The limitations set out in this clause have been agreed in recognition of the parties' respective roles, benefits and obligations and both parties acknowledge that they are reasonable.	b)	if EE has issued a do not deal notice all Commission payments will automatically cease;	17.5	The covenants in clauses 17.1 to 17.2 are intended for the benefit of, and shall be enforceable to the fullest extent permitted by law, by the Supplier and each of its group companies from time to time and shall apply to actions carried out by the Business Partner (or any member of the Business Partner's group) in any capacity (including as shareholder, partner, director, principal, consultant, officer, agent or otherwise) and whether directly or indirectly, on its own behalf or on behalf of, or jointly with, any other person.
13.6	This clause 13 shall survive termination of the Contract.	c)	the Supplier reserves the right to stop on-going payments of Commission and shall be entitled to claim repayment of all Commission advanced to the Business Partner in advance of Commission being payable by EE;		
<b>14</b>	<b>Termination</b>	d)	the Supplier reserves the right to withhold any and all Commissions that may be due to the Business Partner to make adequate provision for prospective Clawback;	17.6	Except as expressly provided in 17.5, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
14.1	The Supplier may at any time by giving notice in writing to the Business Partner (and in reciprocation) terminate the Contract with immediate effect:	e)	the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and	17.7	The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.
a)	if the Business Partner commits a material breach not capable of remedy;	f)	clauses which expressly or by implication have effect after termination shall continue in full force and effect.		
b)	if the Business Partner commits a material breach or persistent immaterial breach of any of these Conditions and has not complied with a notice specifying the breach and requiring its remedy within thirty (30) days;	<b>15</b>	<b>Force majeure</b>	<b>18</b>	<b>General</b>
c)	if the Business Partner is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or if any step is taken (by the Business Partner or by any third party in respect of the Business Partner) to: initiate a composition, scheme, or other arrangement with any of its creditors; commit any act of bankruptcy or appoint a trustee in bankruptcy; resolve or petition to wind up the Business Partner; appoint an administrator, receiver or manager over all or any part of the	15.1	For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.	18.1	Assignment and other Dealings
				a)	The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party, with prior written notice

b)	The Business Partner shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.		(including Commission) which are or become payable by the Business Partner to the Supplier on any account whether pursuant to this agreement or any other agreement or arrangement between the Business Partner and the Supplier.	18.7	Third Parties	any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
18.2	Notices					
a)	Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first class post or other next working day delivery service, or by commercial courier, fax or e-mail.	18.4	Severance		18.8	Variation
b)	A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2 a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.	18.5	Waiver		18.9	Governing Law
c)	The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.				18.10	Jurisdiction
18.3	Set off	18.6	No Partnership or Agency			
	The Supplier reserves the right to set off against any sums due to the Business Partner		Nothing in a Contract or these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between			

# Appendix A

## Processing Appendix 1

This Processing Appendix describes the types of EE Customer Data, the purposes for which they may be Processed by the Supplier, the Data Subjects, the mandatory retention requirements that have to be applied to that EE Customer Data, the location of the data processing and a list of Sub-Processors.

**Effective Date:** the date of this Amendment Agreement

**Services:** are defined in Clause 1.1. of the Agreement.

**Data Subjects:** Customers and prospective customers

**Breakdown of EE Customer Data:**

**Sub-Processors:** Authorised Stockists appointed by the Distributor in accordance with the Agreement as at the date of this Amendment Agreement.

**Location:** Within the EEA

	Data type	Purpose	Data retention period
1	Name, gender, date of birth and contact details	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer
2	Bank details	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer
3	MSISDN	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer
4	Service plan and Contract's start date and end date	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer
5	Upgrade eligibility date	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer
6	Marketing permission status	promotion and sale of services that the Supplier is authorised to sell under these Conditions	for the duration of Agreement or earlier if Benefits cease to be payable in respect of the Customer



# Appendix B

## General Condition C8

This document sets out the Supplier's obligations in respect of GC C8. For the avoidance of doubt the obligations in this document apply equally to business conducted under any Trade Mark.

1. The parties acknowledge that:
  - 1.1. EE is a Communications Provider and Mobile Service Provider; and
  - 1.2. Business Partners are individually Mobile Service Retailers.
2. Unless the context otherwise requires, words and expressions used in this document have the meanings set out in GC C8, which are reproduced in the notes to this document for convenience.
3. The parties acknowledge that:
  - 3.1. Business Partners acts as agents on EE's behalf in certain respects, as further set out in these Conditions;
  - 3.2. Business Partners shall be bound by certain matters in relation to GC C8, as further set out below; and
  - 3.3. EE shall be entitled to Claw Back all Benefits paid or payable in respect of any Connection, Upgrade or other transaction as a result of which Benefits become payable where EE reasonably believes that such Connection, Upgrade or other transaction have been conducted in a manner in breach of GC C8.
4. In the event of any inconsistency between this document and the rest of these Conditions, nothing in this document shall relieve the Business Partner of their respective obligations as set out elsewhere in these Conditions.
5. Section 8.3 and Sections 9 to 12 of this document do not apply to Prepaid Mobile Services and SIM Only Contracts.
6. **Obligations with regards to Mobile Service Retailers**

Each Business Partner must:

  - 6.1. ensure that any information it provides to Relevant Customers is accurate and not misleading;
  - 6.2. ask Relevant Customers if they also want the information referred to in Section 8.1 above to be provided in a Durable Medium and, if they do, provide such information in that form; and
  - 6.3. create and keep records about the sale of EE's Relevant Mobile Services for a period

of not less than six months and, where applicable, about a related sales incentive as referred to in GC C8.11, for a period of not less than ninety days after the date by which this sales incentive must be fully redeemed, but not less than six months.

## 7. Relevant Mobile Services – Information at Point of Sale

Each Business Partner shall ensure that, before entering into or amending a contract for a Relevant Mobile Service, the Relevant Customer:

- 7.1. is authorised to do so;
- 7.2. intends to enter into this contract; and
- 7.3. is provided with the information set out below in a clear, comprehensible and accurate manner in a Durable Medium which is available or accessible to the Relevant Customer or, where the Relevant Customer enters into or amends the contract during a sales call, by telephone:
  - (a) the identity of the legal entity the Relevant Customer is contracting with; its address and telephone, fax and/or e-mail contact details; and
  - (b) a description of the Relevant Mobile Service; the key charges (including minimum contract charges, any early termination charges, if applicable and if the Relevant Customer is a Consumer, the Access Charge to be applied); payment terms; the existence of any termination right, including termination procedures; the likely date the Relevant Mobile Service will be provided, in case the provision of the Relevant Mobile Service is not immediate; and any Fixed Commitment Period.

Where the Relevant Customer enters into a contract during a sales call, in addition to the oral provision of this information the Business Partner shall ensure that this information is sent to the Relevant Customer in good time following the call in a Durable Medium.

## 8. Relevant Mobile Services - Records Retention

The Business Partner must create and keep records about the sale of Relevant Mobile Services for a period of not less than six months and, where applicable, about a related sales incentive as referred to in Condition 8.11, for a period of not less than ninety days after the date by which this sales incentive must be fully redeemed, but not less than six months. Such records must include the date of the sale, the means through which the contract was entered

into and the place where the contract was entered into, where applicable.

## 9. Mobile Service Retailers - Training

The Business Partner must ensure that processes are in place which assure that the Business Partner its employees and agents are appropriately trained to comply with this document, including without limitation arranging at its own cost for its employees or agents to attend such training courses as directed from time to time by EE.

## 10. Mobile Service Retailers - Sales Incentives – Information at Point of Sale

The Business Partner shall ensure that, where the Business Partner offers to a Relevant Customer a sales incentive, from which the Relevant Customer does not benefit immediately and which the Relevant Customer is entitled to receive after entering into the contract for the Relevant Mobile Service, the terms and conditions of such an offer are not unduly restrictive and that a Relevant Customer is provided with the following information in a clear, comprehensible and accurate manner in a Durable Medium, or, where the sales incentive offer is made during a sales call, by telephone:

- (a) the identity of the legal entity which makes the sales incentive offer and undertakes to meet the obligation(s) tied to this offer; its address; and telephone, fax and/or e-mail contact details;
- (b) a description of the sales incentive itself; and
- (c) the terms and conditions of the sales incentive, including a detailed and clear explanation as to the process the Relevant Customer has to follow to obtain the sales incentive.

Where the sales incentive offer is made during a sales call, in addition to the oral provision of this information, the Business Partner shall ensure that this information is sent to the Relevant Customer in good time following the call in a Durable Medium.

## 11. GC C8 Breach

The Supplier shall be entitled to Claw Back all Benefits paid or payable in respect of any Connection, Upgrade or other transaction as a result of which Benefits become payable where the Supplier reasonably believes that such Connection, Upgrade or other transaction has been conducted in a manner in breach of GC C8.

## Notes to Appendix B:

### GC C8

- (a) **"the Act"** means the Communications Act 2003;
- (b) **"Apparatus"** includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;
- (c) **"Communications Provider"** means a person who (within the meaning of section 32(4) of the Act) provides an Electronic Communications Network or an Electronic Communications Service";
- (d) **"Consumer"** means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;
- (e) **"Domestic or Small Business Customer"** means in relation to a Communications Provider, a Customer of that Provider who is neither (i) himself a Communications Provider; nor (ii) a person who is such a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise);
- (f) **"Durable Medium"** means paper or email, or any other medium that (a) allows information to be addressed personally to the recipient; (b) enables the recipient to store the information in a way accessible for future reference for a period that is long enough for the purposes of the information; and (c) allows the unchanged reproduction of the information to be stored;
- (g) **"End User"** means in relation to a Public Electronic Communications Service means (a) a person who, otherwise than as a Communications Provider, is a Customer of the provider of that service; (b) a person who makes use of the service otherwise than as a Communications Provider; or (c) a person who may be authorised, by a person falling within paragraph (a) so to make use of the service.
- (h) **"Fixed Commitment Period"** means a period beginning on the date that contract terms agreed by a Communications Provider and a Subscriber take effect and ending on a date specified in that contract, and during which the Subscriber is required to pay for services and facilities provided under the contract and the Communications Provider is bound to provide them and in respect of which the Subscriber may be required to pay a charge to terminate the contract;
- (i) **"Mobile Communications Service"** means a Public Electronic Communications Service consisting in the conveyance of Signals, by means of a Public Electronic Communications Network, through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion;
- (j) **"Mobile Service Provider"** means a Communications Provider that provides a Mobile Communications Service;
- (k) **"Mobile Service Retailer"** means any person who sells or markets a Mobile Communications Service directly to a Domestic or Small Business Customer;
- (l) **"Prepaid Mobile Service"** means a Mobile Communications Service for which the Relevant Customer pays charges in advance of the service being provided;
- (m) **"Publicly Available Telephone Service"** means a service made available to the public for originating and receiving directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;
- (n) **"Public Electronic Communications Network"** means an Electronic Communications Network provided wholly or mainly for making Electronic Communications Services available to members of the public;
- (o) **"Public Electronic Communications Service"** means any Electronic Communications Service that is provided so as to be available for use by members of the public;
- (p) **"Relevant Customer"** has the meaning set out in GC C8 (as amended or replaced from time to time);
- (q) **"Relevant Mobile Services"** has the meaning set out in C8.1(b) of GC C8 (as amended or replaced from time to time);
- (r) **"SIM Only Contract"** means a contract for a Mobile Communications Service where the only physical equipment the Customer obtains from the Mobile Service Provider is a Subscriber Identity Module ('SIM') card and the notice period for cancelling this contract does not exceed one calendar month; and
- (s) **"Subscriber"** means any End-User who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services;
- (t) **"Wireless Telegraphy"** means the emitting or receiving, over paths that are not provided by any material substance constructed or arranged for the purpose, of electromagnetic energy of a frequency not exceeding 3,000 gigahertz that: (a) serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or (b) is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects.